IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22736 & 22738 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUSTAQBHAI MOHAMMADBHAI - Petitioner(s)
Versus
VIRAMGAM MUNICIPALITY & 3 - Respondent(s)

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Appearance :

MR DIPAK R DAVE for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
MR CB DASTOOR for Respondent(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 2,
MR VIRAT G POPAT for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 01/09/2006

COMMON ORAL JUDGMENT

1. In both the petitions the prayers by the

petitioners are for directing Respondent No.1 to accept the licence fees from the petitioners immediately in respect of the shops situated at Taivadi and the prayers are for directing Respondent No.1 to renew the licence of the petitioners. The petitioners have also prayed to hold that the action on the part of the respondent No.1 in not renewing the licence of the petitioners as illegal and arbitrary and the petitioners have prayed the other consequential reliefs.

2. I have heard the learned Counsel appearing for the petitioners as well as Ms.Patel, learned AGP for Respondent State Authority, Mr.Dastoor, learned Counsel for Respondent No.1 Municipality and Mr.Popat, learned Counsel for the private respondent.

3. It appears that the grievance on the part of the petitioners is that the Municipality has resolved for establishing a new mutton shop and until the alternative place is allotted to the petitioners for doing business of mutton shop, the case of the petitioners is that the

Municipality cannot restrict or prohibit the business of the petitioners of mutton shop by not renewing licence.

4. Whereas the case of the respondent Municipality is that in pursuance of the resolution passed by the Municipality dated 11.3.2004 vide No.4, all mutton shops are to be permitted at one place and no permission should be granted at a different places and it is resolved not to renew the licence and, therefore, the licences of the petitioners were not renewed.

5. The grievance on the part of the private respondents is that running of mutton shops at Katarwada is causing great nuisance and as such all mutton shops are situated in Taivadi area and, therefore, the petitioners should not be permitted to run mutton shops at Katarwada.

6. It appears that initially when this Court (Coram: Akil Kureshi, J.) entertained the petition, as there was no proper representation on behalf of the Municipality by the Chief Officer, the Court prima facie observed that the petitioners cannot be restrained from doing the

business at the same place until the alternative place is provided of mutton shops at one place and consequently the interim order was passed by this Court directing the respondents not to prevent the petitioners from continuing their business of selling meat from the shops from where they had been doing so since years.

7. It prima facie appears that the resolution of the Municipality is comprised of two parts; one is for establishing the mutton shops at one place by establishing mutton market and the second is for permitting the business of mutton shops at one place and not to renew the licence already granted. Therefore, establishing the mutton shops at one market for providing all mutton shops by the Municipality at one place is a separate issue, whereas the second part of the resolution was not to renew the licence. It prima facie appears that as per the Municipality the licence was not renewed in view of the second part of the resolution of the Municipality, resolving for permitting all mutton shops at one place and not to renew the

licence thereafter.

8. The learned Counsel appearing for the petitioners as well as for the private respondent and the Municipality have made their rival submissions on the aspects that earlier the shops of the petitioners were at Katarwada and not at Taivadi, whereas on behalf of the private respondent and the Municipality it has been contended that even as stated in the petition, the petitioners themselves have mentioned that their shops are situated at Taivadi in the City of Virangam and the case of the Municipality is that they are continued even though the licence is not renewed by the Municipality.

9. Therefore, this Court was also required to examine the aspects as to whether it is open to the Municipality not to renew the licence of the petitioners on the ground that the shops are situated at a different place or not and whether such a resolution or the decision on the part of the Municipality can be said as a complete ban of right to do the business under Article 19(1)

(g) of the Constitution of India or not since the petitioners have option of doing the business at a different place, where the Municipality has no objection for permitting the business of mutton shops. It appears that at the time of passing the interim order the aforesaid aspects did not come up for examination before this Court but at the time of final hearing, it could have been considered.

10. However, at this stage, Mr.Dave, learned Counsel for the petitioners, under the instructions of his client, submitted that since the action of the Municipality is based on the resolution, the petitioner has the remedy of approaching before the District Collector under Section 258 of the Gujarat Municipalities Act, the petitioners would like to approach before the District Collector under Section 258 of the Gujarat Municipalities Act and he submitted that the interim order passed by this Court may be continued for some time until the petitioners approach before the District Collector.

11. The learned Counsel appearing for the respondent

Municipality as well as the private respondent submitted that in the event the petitioners are desirous to approach before the Collector under Section 258 of the Gujarat Municipalities Act, this Court may observe that the Collector shall not be influenced by any of the observations made by this Court in the present proceedings.

12. Under the above circumstances, as the petitioners are desirous to approach before the alternative Forum of the District Collector under Section 258 of the Gujarat Municipalities Act permission is granted. The petitions are disposed of as not pressed. It is clarified that in the event the petitioners file the application under Section 258 of the Gujarat Municipalities Act before the District Collector, the District Collector shall not be influenced by any observations made by this Court in the earlier interim order passed on 10.1.2006. The District Collector shall be at liberty to take independent view of the matter on the basis of the material available before him and in accordance with law. It is further

directed that the status-quo as prevailing on today shall be continued for a period of two weeks from today. It appears that pursuant to the interim order passed by this Court, the licences are renewed in favour of the petitioners, however, as the interim order is being vacated and status-quo is ordered to be continued only for two weeks, such action on the part of the Municipality shall come to an end upon expiry of the period of two weeks from today, unless any prohibitory order is passed by the District Collector after considering the matter and after proper application of mind. However, the District Collector shall not be influenced by even interim order passed by this Court in this petition and shall take independent view of the matter on the basis of the material available before him and in accordance with law.

13. Subject to the aforesaid observations and directions, rule discharged.

1.9.2006 **(Jayant Patel, J.)**

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